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Letter dated 21 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/526).

The Counter-Terrorism Committee has received the attached supplementary report from Namibia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 16 April 2003 from the Permanent Mission of Namibia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Namibia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001), and has the honour to transmit the follow-up report of the Government of the Republic of Namibia (see enclosure). The report is in response to the Counter-Terrorism Committee's questions and comments contained in its letter dated 1 May 2002.

Enclosure

Report of the Government of Namibia to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Namibia submitted its first report in December 2001 to the Security Council Committee established pursuant to paragraph 6 of the said resolution on the steps taken to implement the resolution. The current report is being submitted in response to the Counter-Terrorism Committee's questions and comments as contained in its letter dated 1 May 2002.

Paragraph 1 :

- According to the report, the Government of Namibia has "strongly advised" all banking institutions in Namibia "to tighten their existing financial regulations taking into account the provisions of" the Resolution. Please outline the legal provisions in Namibia, which apply to these institutions and to other natural and legal persons, and which are designed to implement paragraph 1 of the Resolution.

Response

Until the Anti-Terrorism Activities Bill is passed by Parliament, the legal provisions which apply to these institutions and other natural and legal persons are to be found in Banking Institutions Act, 1998 (Act No.2 of 1998), Criminal Procedure Act No. 51 of 1977, common law and any regulation issued by the Governor of the Bank of Namibia, under the power vested in the Bank by virtue of section 71 (3) of the Banking Institutions Act, 1998. Under Section 50 of the Banking Institutions Act, 1998 (Act No.2 of 1998), the Bank of Namibia requires all commercial banks to report to the Bank any suspicious transaction, which may involve illegal activities. This requirement is mainly meant to uncover cases of money laundering, but could be extended to funding of terrorism, with the passing of the Anti-Terrorism Activities Bill.

- In particular, in view of the efforts of the international community to stop abuse of informal banking networks, please comment on how these efforts will be reflected in Namibia legislation?

Response

All banking institutions are established and operate in accordance with the provisions of the Banking Institutions Act of 1998, which regulates the establishment of banking institutions in Namibia. There are no informal banking networks in Namibia. All banking activities in Namibia have to be authorized by the Bank of Namibia under this Act. The proposed Anti-Terrorism Activities Bill does not reflect informal banking networks or cultural organizations as such, but the Bill empowered the President to proscribe an organization if it:

(a) Commits or participate in terrorism;
(b) Prepares for acts of terrorism;
(c) Promotes or encourages terrorism; or
(d) Is otherwise concerned in terrorism.

- What preventive controls and surveillance measures has Namibia put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations?

Response

There are preventive measures at the Government's disposal in section 6 of the Banking Institutions Act of 1998, in so far as it provides for a limitation on the fundamental rights contemplated in Sub-article (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communication, and to enter any premises or to search any person in accordance with the provisions of Chapter 2 of the Criminal Procedure Act of 1977.

- Are there any mechanisms available, in present circumstances, for the freezing of funds, assets and other financial resources as required by sub-paragraph 1 (c) of the Resolution?

Response

In the present circumstances this can be done under the provisions of section 20 of Chapter 2 of the Criminal Procedure Act of 1977 on seizure, taking into account the provisions of sub-article (1) of Article 13 of the Namibian Constitution. Freezing as such is not covered in this Act. Pursuant to United Nations Security Council resolutions 1267 (1999) and 1333 (2000), the Bank of Namibia has issued two Exchange Control Circulars (No. BON 01/19 of 2 November 2001 and No. BON 02/08 of March 2002) to authorized dealers in foreign exchange (commercial banks) under power vested in the Bank under the Exchange Control Regulations, 1961. Authorized dealers are required to report any foreign transactions involving identified persons and institutions to the Bank. The Bank has the power under Regulation 4 to freeze the accounts of residents transferring funds to the identified persons and institutions. The Minister of Finance, in turn, has the power to forfeit such monies to the State. So far none such cases have been reported.

Sub-paragraph 2 (a):

- Does the Defence Act, 1957 (Act 44 of 1957) or any other legal provision prevent the recruitment of members of terrorist groups or will this obligation be reflected in the legislation to combat organized crime? Please provide an outline of the legal provisions, which are relevant in that regard.

Response

Act 44 of 1957 is repealed and a new Defence Act, 2002 (Act 1 of 2002) entered into force on the 15 July 2002. The Defence Act, 2002 does not directly prohibit recruitment of members of terrorist groups. However, if passed by Parliament, the proposed Anti- Terrorism Activities Bill, in Chapter 2 deals with "Membership of terrorist organizations."

- Is a licence required to buy or sell weapons in Namibia?

Response

Yes, the Arms and Ammunition Act, 1996 prohibits the buying and selling of firearms without a licence.

Sub-paragraphs (c) and (d):

- What are the existing or proposed legislative measures for the implementation of these two sub-paragraphs?

Response

The existing legislation on these issues, is the Immigration Control Act of 1993, which among others, gives powers to the Minister of Home Affairs on the recommendation of the Security Commission (established under

Article 114 of the Namibian Constitution) to expel or deport from the territory of Namibia, persons regarded as threats to the security of the Republic. Issues raised under these sub-paragraphs are addressed in Chapter 2 of the proposed Anti-Terrorism Activities Bill, in particular under the heading "Prohibition of rendering assistance and support".

Sub-paragraph 2 (e):

- Will the Terrorism Bill include provisions to implement this sub-paragraph?

Response

Yes, it is included in Chapter 2 of the proposed Bill.

Sub-paragraph 2 (g):

- Please elaborate on how this sub-paragraph is implemented in Namibian legislation. Please also explain how security has been stepped up at border posts, airports and harbours and on how immigration control has been tightened.

Response

This sub-paragraph is implemented in Namibia in accordance with the provisions of the Immigration Control Act (Act No.7 of 1993), in particular sections 6,7,8,9,10,11,12 and 13 of this Act. With regard to the security measures at border posts, airports, harbours; the border posts have been computerized, aimed at not only to enable us to keep up to date records, but also to make sure that no suspected terrorist gets into the country. The Government has improved its liaising mechanism with all security related institutions in the country. All immigration officers/officials have been instructed to make sure that all travelers entering the country are doing so, in accordance with the provisions of the Immigration Control Act.

- Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and outline the measures which exist to prevent such forgery, etc.

Response

In order to prevent counterfeiting, forgery or fraudulent use of identity documents, e.g. passports, the Government has replaced the old passport with a new version, the machine readable passport system, not only as a means to curb forgery, but also to keep an up date data system. Namibia exchanges lists of black listed persons on counterfeiting, forged or fraudulent obtained documents through regional and bilateral information networks. Officers and officials receive twenty-four (24) hours on line information on listed suspected terrorists and those who have forged traveling documents. Immigration officials and officers continue to receive immigration security related training both locally and abroad, to improve their skills in detecting these activities.

Sub-paragraphs 3 (b) and (c):

- With which countries has Namibia entered into bilateral agreements to prevent and suppress terrorist attacks and take action against perpetrators of such acts?

Response

Namibia has not entered into bilateral agreements to prevent and suppress terrorist attacks, until the Anti-Terrorism Activities Bill becomes law. Namibia will deal with perpetrators of terrorist acts according to the ordinary criminal law.

- With which countries has Namibia entered into bilateral treaties on extradition and mutual legal assistance?

Response

Namibia's legislation on extradition and mutual legal assistance provides that Namibia's extradition relations with other countries can be established by way of entering into bilateral or multilateral agreements with other countries or by designating specific countries to which extradition may be effected to. Currently there is no extradition or mutual legal assistance treaties that have been ratified yet, although negotiations with other countries to enter into such treaties have commenced. Countries that have been designated for extradition are as follows:

1. Australia
2. Botswana
3. Canada
4. Ghana
5. India
6. Jamaica
7. Kenya
8. Lesotho
9. Malawi
10. Malaysia
11. Malta
12. Mauritius
13. Mozambique
14. New Zealand
15. Nigeria
16. Seychelles
17. Sierra Leone
18. Singapore
19. South Africa
20. Sri Lanka
21. Swaziland
22. Tanzania
23. Uganda
24. Great Britain and N/Ireland
25. Zambia
26. Zimbabwe
27. Italy
28. Brazil
29. Germany

Countries that have been designated for mutual legal assistance are as follows:

1. Angola
2. Botswana
3. Democratic Republic of the Congo
4. Malawi

5. Mauritius
6. Mozambique
7. Lesotho
8. Seychelles
9. South Africa
10. Swaziland
11. Tanzania
12. Zambia
13. Zimbabwe

Sub-paragraph 3 (d):

- Please provide a progress report on the ratification by Namibia of the relevant international conventions and protocols relating to terrorism.

Response

In September 2002, Namibia deposited the instrument of accession to the Convention on Physical Protection of Nuclear Material with the Director-General of the International Atomic Energy Agency.

Sub-paragraphs 3 (f) and (g):

- Please elaborate on how refugees are screened in order to ensure that asylum seekers have not planned, facilitated or participated in the commission of terrorist acts and that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts.

Response

There is a memorandum of understanding between the United Nations High Commissioner for Refugees (UNHCR), Namibia Legal Help (NLH) led by a trained Lawyer B. Olivier, who has his own private law firm and the Ministry of Home Affairs, which is renewable every after twelve (12) months under which the screening process of asylum seekers is done. Prior to this the Legal Assistance Centre was entrusted with the screening process.

After NHL has done the initial screening process, it sends the recommendations of the individual applications by asylum seekers to the Namibian Refugee Committee, established in terms of section 7 of the Namibian Refugees Recognition and Control Act No 2 of 1999 for status determination. The Namibian Refugee Committee is composed of the following staff members:

1. The Commissioner for Refugees in Namibia as a chairperson.
2. One staff member from the Ministry of Foreign Affairs.
3. One staff member from the Office of the Attorney General.
4. One staff member from the Office of the President.
5. One staff member from the Council of Churches in Namibia (CCN).
6. One staff member from the Namibia Red Cross Society (NRCS).
7. One staff member from UNHCR in an advisory capacity.

- How does Namibian legislation ensure that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists?

Response

During the status determination procedure, all the members hear an individual application on the facts presented before the Committee. A close analysis is then made to see whether or not an individual asylum seeker does qualify for the refugee status, either in terms of the Geneva Convention of 1951 or in terms of the OAU Convention of 1969, which covers specific aspects of refugees in Africa.

Other matters:

- Could Namibia please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

Response

Until the Anti-Terrorism Activities Bill becomes law, Namibia's normal/traditional police, immigration control, customs and taxation administrative structures/charts are contributing to compliance with the Resolution.